

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Eric Rigie	Team: Squad #3	CCRB Case #: 201602548	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 03/17/2016 4:00 PM	Location of Incident: In front of 999 President Street, enroute and inside the 71st Precinct stationhouse	Precinct: 71	18 Mo. SOL 9/17/2017	EO SOL 9/17/2017	
Date/Time CV Reported Sat, 03/26/2016 10:56 AM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sat, 03/26/2016 10:56 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM David Savella	04134	952218	071 PCT
2. LT Luis Machado	00000	940403	071 PCT
3. POM Miguel Rodriguez	27308	942460	071 PCT
4. POM Lazo Lluca	22410	943493	071 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Miguel Rodriguez	Discourtesy: In front of 999 President Street, Police Officer Miguel Rodriguez spoke discourteously to § 87(2)(b)	
B.POM Miguel Rodriguez	Abuse: In front of 999 President Street, Police Officer Miguel Rodriguez stopped § 87(2)(b)	
C.POM Lazo Lluca	Abuse: In front of 999 President Street, Police Officer Lazo Lluca stopped § 87(2)(b)	
D.POM David Savella	Abuse: In front of 999 President Street, Police Officer David Savella stopped § 87(2)(b)	
E.LT Luis Machado	Abuse: In front of 999 President Street, Lieutenant Luis Machado stopped § 87(2)(b)	
F.POM David Savella	Discourtesy: In front of 999 President Street, Police Officer David Savella spoke discourteously to § 87(2)(b)	
G.LT Luis Machado	Discourtesy: In front of 999 President Street, Lieutenant Luis Machado spoke discourteously to § 87(2)(b)	
H.POM David Savella	Abuse: In front of 999 President Street, Police Officer David Savella threatened § 87(2)(b) with the use of force.	
I.POM David Savella	Force: In front of 999 President Street, Police Officer David Savella used physical force against § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
J.POM Miguel Rodriguez	Discourtesy: En-route to the 71st Precinct stationhouse, Police Officer Miguel Rodriguez spoke discourteously to § 87(2)(b)	
K.POM David Savella	Discourtesy: En-route to the 71st Precinct stationhouse, Police Officer David Savella spoke discourteously to § 87(2)(b)	
L.LT Luis Machado	Discourtesy: En-route to the 71st Precinct stationhouse, Lieutenant Luis Machado spoke discourteously to § 87(2)(b)	
M.LT Luis Machado	Abuse: At the 71st Precinct stationhouse, Lieutenant Luis Machado issued a summons to § 87(2)(b)	

Case Summary

On March 26, 2016, § 87(2)(b) filed this complaint with the CCRB via the website. On March 27, 2016, § 87(2)(b) filed a duplicate complaint via the website.

On March 17, 2016, at approximately 4:00 p.m., § 87(2)(b) § 87(2)(b) double-parked his marked postal truck opposite of 999 President Street in Brooklyn. § 87(2)(b) exited his truck via the street side door and almost made physical contact with an unmarked RMP driven by PO Miguel Rodriguez of the 71st Precinct. Also in the RMP were Lieutenant Luis Machado, PO David Savella, and PO Lazo Lluka also of the 71st Precinct. Since the incident, PO Savella has been transferred to the 63rd Precinct, PO Rodriguez was transferred to the 60th Precinct, PO Lluka was transferred to the 72nd Precinct, and Lieutenant Machado was transferred to the Manhattan VIPER unit. § 87(2)(b) responded by yelling, “Watch where the fuck you’re going!” at PO Rodriguez. PO Rodriguez stopped the RMP and allegedly said to § 87(2)(b) “We have the fucking right of way. We’re fucking cops. Who the fuck are you?” (**Allegation A**).

The officers engaged in conversation with § 87(2)(b) and then stopped him (**Allegations B, C, D, and E**). A crowd of individuals including § 87(2)(b) and individuals known only as § 87(2)(b) and § 87(2)(b) gathered to watch the incident and § 87(2)(b) filmed part of the incident on his cell phone. PO Savella allegedly said to § 87(2)(b) “What the hell is your problem? You know who the fuck we are” (**Allegation F**). PO Savella told § 87(2)(b) to provide his ID multiple times and also allegedly told § 87(2)(b) to “shut the fuck up” repeatedly (also **Allegation F**). § 87(2)(b) did not provide his ID, but instead asked the officers to call his fiancée, § 87(2)(b) § 87(2)(b). PO Savella allegedly responded, “We don’t give a fuck” (also **Allegation F**). Lieutenant Machado also allegedly responded, “We don’t care about that. Fuck your wife” (**Allegation G**). PO Savella and PO Lluka then grabbed § 87(2)(b) arms to handcuff him. PO Savella and PO Lluka told § 87(2)(b) to stop resisting, because he did not allow the officers to pull his hands behind his back. PO Savella said to § 87(2)(b) “Put them behind your back. You’re gonna get hurt unless you put your fucking...yes you are” (also **Allegation F** and **Allegation H**). § 87(2)(b) was then handcuffed and escorted to the officers’ RMP. Outside of the RMP, PO Savella searched § 87(2)(b) who moved slightly backward. In response, PO Savella grabbed him by the pants and shirt and pulled § 87(2)(b) aggressively toward him and said, “I’m fucking serious” (**Allegation I** and also **Allegation F**).

§ 87(2)(b) and the officers got into the RMP and drove to the 71st Precinct stationhouse. During the drive, PO Savella, PO Rodriguez, and Lieutenant Machado repeatedly told § 87(2)(b) “Shut the fuck up” (**Allegations J, K, and L**). PO Rodriguez also told § 87(2)(b) “You’re a fucking fake federal worker who only delivers boxes. Shut the fuck up! We’re the fucking police. We have the right of way. You’re supposed to stop. You were double parked!” (also **Allegation J**). § 87(2)(b) responded that the officers almost hit him and PO Rodriguez replied, “You shouldn’t be double parked! Shut the fuck up! You’re a fake federal worker who only makes \$70,000 per year. I make \$110,000 to \$130,000 a year. I can piss on your salary. Shut the fuck up! Remain silent and shut the fuck up!” (also **Allegation J**). During the drive, PO Rodriguez rear-ended another motorist. § 87(2)(b) complained of pain in his shoulder and lower back and PO Savella allegedly responded, “Shut the fuck up and stop bitching” (also **Allegation K**).

The officers then transported § 87(2)(b) to the 71st Precinct stationhouse where PO Savella issued him a c-summons for disorderly conduct under the orders of Lieutenant Machado (**Allegation M**). EMS was called for § 87(2)(b) at the stationhouse due to his complaints of pain, but § 87(2)(b) refused medical attention. § 87(2)(b) was subsequently released from custody.

§ 87(2)(g)

The investigation obtained § 87(2)(b)'s video from media reports of the incident (embedded below).



201602548_20160413_1540_DM.mp4

The investigation also obtained security footage of 1000 President Street from IAB (embedded below).



201602548_20160607_0849_DM.mp4

Mediation, Civil and Criminal Histories

- This case was not eligible for mediation § 87(2)(b).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- On § 87(2)(b), § 87(2)(b) filed a Notice of Claim for this incident and provided 50H Testimony on § 87(2)(b), in which he claimed that he had been illegally stopped, seized, searched, falsely arrested, falsely imprisoned, assaulted, battered, humiliated, abused, exposed to a motor vehicle accident, denied prompt and necessary medical attention, and had his constitutional rights violated. § 87(2)(b) is seeking \$1,000,000 in damages. § 87(2)(b) 50H testimony will be added to the case file upon receipt (01 Board Review).

Civilian and Officer CCRB Histories

- This is § 87(2)(b) first CCRB complaint (02 Board Review).
- PO Savella has been a member of the NYPD for four years and has five previous CCRB cases involving seven allegations and no substantiated allegations. § 87(2)(g)
- Lieutenant Machado has been a member of the NYPD for 10 years and has 12 previous CCRB cases involving 26 allegations, including one substantiated allegation for physical force. The recommended and confirmed penalty for this allegation was instructions. § 87(2)(g)
- PO Rodriguez has been a member of the NYPD for nine years and has one previous CCRB case involving one allegation, which was not substantiated. § 87(2)(g)
- PO Lluca has been a member of the NYPD for 9 years and has four previous CCRB cases involving five allegations and no substantiated allegations. § 87(2)(g)

Potential Issues

- § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
- § 87(2)(g) [REDACTED]
[REDACTED]
- IAB provided a recorded statement from one or more witnesses who they never identified and for which they did not specify the date and time that the statement was obtained. § 87(2)(g) [REDACTED]
[REDACTED]

Findings and Recommendations

Allegations Not Pleaded

- During his IAB interview, § 87(2)(b) [REDACTED] alleged that, when he asked the officers to give his mail truck keys to his supervisor, § 87(2)(b) [REDACTED] PO Savella told him, “We don’t give a fuck about § 87(2)(b) [REDACTED] We’ll give § 87(2)(b) [REDACTED] the fucking mail keys when we fucking feel like it.” However, § 87(2)(b) [REDACTED] did not make this allegation during his CCRB interview. § 87(2)(g) [REDACTED]
[REDACTED]
- § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
- During his phone statement, § 87(2)(b) [REDACTED] alleged that PO Rodriguez threatened to arrest him. However, § 87(2)(b) [REDACTED] did not make this allegation during his verified statement and no such statement was captured on video. § 87(2)(g) [REDACTED]
[REDACTED]
- § 87(2)(b), § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- § 87(2)(b) [REDACTED] alleged that PO Savella ripped the Velcro off of his uniform pants. § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
- § 87(2)(b) [REDACTED] alleged that PO Lluka threw the parcel into his truck. § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- Although PO Rodriguez said that PO Lluka cursed multiple times at § 87(2)(b) [REDACTED] testified that PO Lluka was the only officer who did not use profanity toward him and PO Lluka is not heard using profanity in video of the incident. § 87(2)(g) [REDACTED]
[REDACTED]

Allegation A –Discourtesy: In front of 999 President Street, Police Officer Miguel Rodriguez spoke discourteously to § 87(2)(b)

Allegation F – Discourtesy: In front of 999 President Street, Police Officer David Savella spoke discourteously to § 87(2)(b)

Allegation J –Discourtesy: En-route to the 71st Precinct stationhouse, Police Officer Miguel Rodriguez spoke discourteously to § 87(2)(b)

Allegation K –Discourtesy: En-route to the 71st Precinct stationhouse, Police Officer David Savella spoke discourteously to § 87(2)(b)

Allegation L –Discourtesy: En-route to the 71st Precinct stationhouse, Lieutenant Luis Machado spoke discourteously to § 87(2)(b)

§ 87(2)(b) said that after he shouted “Watch where the fuck you’re going! What the hell?” PO Rodriguez responded, “We have the fucking right of way. We’re fucking cops. Who the fuck are you?” Other officers in the car also yelled profanity, but § 87(2)(b) did not remember any specific statements. § 87(2)(b) also alleged that PO Savella asked, “What the hell is your problem? You know who the fuck we are? We have the right of way. You’re double parked. You shouldn’t even be double parked.” PO Savella also allegedly told § 87(2)(b) to “shut the hell up” or “shut the fuck up” repeatedly, but § 87(2)(b) was not sure of the specific statement. When § 87(2)(b) asked the officers to call his fiancée, § 87(2)(b) and PO Savella allegedly responded, “We don’t give a fuck.” § 87(2)(b) said that on the ride to the stationhouse, PO Rodriguez, PO Savella, and Lieutenant Machado repeatedly told him to, “Shut the hell up” and, “Shut the fuck up.” The only officer who never used any profanity toward § 87(2)(b) during the incident was PO Lluka. § 87(2)(b) alleged that he was also told by PO Rodriguez, “You’re a fucking Postal fake federal worker who only delivered boxes.” After the RMP crossed Empire Boulevard and Bedford Avenue, the RMP stopped and PO Rodriguez turned around and said, “Shut the fuck up! We’re the fucking police. We have the right of way. You’re supposed to stop. You were double parked!” § 87(2)(b) responded that the officers almost hit him when he stepped out of the vehicle and PO Rodriguez replied, “You shouldn’t be double parked! Shut the fuck up! You’re a fake federal worker who only makes 70,000 dollars per year. I make a \$110,000 to \$130,000 a year. I can piss on your salary. Shut the fuck up. Remain silent and shut the fuck up!” While making this statement to § 87(2)(b) PO Rodriguez had turned around to look at § 87(2)(b) and § 87(2)(b) noticed that the car was slowly rolling forward. When PO Rodriguez turned back toward the windshield, his foot suddenly hit the accelerator. The officers’ car then rear-ended an SUV at approximately 5 to 10 MPH. Because the officers did not put § 87(2)(b) seatbelt on, he flew forward and hit his left shoulder on the driver’s seat and hit his cheek on top of the center console, causing him to sustain bruises. § 87(2)(b) turned to the right, began crying, and complained to PO Savella about the pain to his shoulder and lower back. PO Savella told § 87(2)(b) “Shut the fuck up and stop bitching” (04 Board Review). § 87(2)(b) IAB interview was generally consistent with his CCRB testimony, although he said that PO Rodriguez’s initial comment to him was, “Excuse me?” § 87(2)(b) also said that he exchanged curses back and forth with the occupants of the vehicle, but did not provide any specific statements (03 and 23 Board Review).

§ 87(2)(b) said that he, § 87(2)(b) and other unknown individuals were in the barbershop next to 999 President Street when he observed PO Rodriguez speaking to an unseen individual through the RMP’s open driver’s window. The only statement § 87(2)(b) could hear was an officer say, “You don’t want us to get out.” § 87(2)(b) heard § 87(2)(b) respond, “Oh

whatever man. Y'all can't do nothing. I'm working." At that point the officers got out of the RMP and approached § 87(2)(b) also said while searching § 87(2)(b) later in the incident, PO Savella grabbed § 87(2)(b) pants and made a statement along the lines of, "Don't fucking tell me what I gotta do." § 87(2)(b) could not hear the specific statement because of the crowd yelling (07 Board Review). § 87(2)(g)

§ 87(2)(b) corroborated that the RMP almost hit § 87(2)(b) who responded by cursing at PO Rodriguez. The unmarked car stopped and an officer in the car said something to § 87(2)(b) that § 87(2)(b) could not hear (10 Board Review).

In a phone statement, § 87(2)(b) said that he heard Lieutenant Machado in the front passenger seat say, "Who the fuck you talking to?" to § 87(2)(b) "§ 87(2)(b)" did not remember any other statements (11 Board Review).

Upon reviewing § 87(2)(b)'s video, at approximately 00:50, § 87(2)(b) yells, "I'm not resisting!" PO Savella replies, "Yes you are. Stop resisting!" PO Rodriguez moves in to assist the other officers and PO Savella says, "Put them behind your back...You're gonna get hurt unless you put your fucking...yes you are." § 87(2)(b) says, "I'm not doing anything to you." At approximately 01:49 PO Savella pulls § 87(2)(b) toward him and says, "I'm fucking serious" (12 and 13 Board Review).

A search of the "See Through NY" website confirmed that PO Rodriguez earned \$120, 128 in 2015 (25 Board Review).

PO Rodriguez denied ever saying, "We have the fucking right of way. We're fucking cops" and did not recall whether any officer ever made this statement. PO Rodriguez did not recall using the word "fuck" in his initial interaction with § 87(2)(b) while he was still inside the vehicle. PO Rodriguez said that PO Savella and PO Lluca began shouting and cursing back and forth with § 87(2)(b) while they were sitting in the backseat of the RMP. PO Rodriguez did not remember any specific statements that PO Rodriguez and PO Lluca made. PO Rodriguez did not curse at § 87(2)(b) and Lieutenant Machado was on his phone and not engaging with § 87(2)(b) at that time. Either PO Savella or PO Lluca said something to § 87(2)(b) along the lines of, "You watch how you get out of the fucking car," but PO Rodriguez was not sure if that was the exact statement. PO Rodriguez said that PO Lluca then got emotional and said, "Ah fuck this guy" loud enough for § 87(2)(b) to hear before getting out of the car with PO Savella. PO Savella and PO Lluca then engaged in a heated verbal dispute with § 87(2)(b) with all three of them cursing at each other while standing in front of 999 President Street. PO Rodriguez did not remember any specific statements made by PO Lluca or PO Savella. PO Rodriguez could not confirm § 87(2)(b) specific discourtesy allegations or remember the exact wording, but did hear PO Savella ask for ID using profanity.

PO Rodriguez said that as he drove the officers toward the 71st Precinct stationhouse, there was lots of yelling in the car with § 87(2)(b) cursing and saying that § 87(2)(b) he would get the officers fired. § 87(2)(b) also asked how much the officers earned. One officer told § 87(2)(b) that it did not matter and did not justify his actions. § 87(2)(b) asked them to call his wife and PO Rodriguez told § 87(2)(b) that he could speak to his wife when he got to the stationhouse. PO Rodriguez said that PO Lluca and PO Savella both told § 87(2)(b) "Shut the fuck up," but PO Rodriguez was not sure whether this was at the scene or in the RMP. PO Rodriguez never told § 87(2)(b) to "shut the fuck up" himself. PO Rodriguez heard Lieutenant Machado tell PO Savella and PO Lluca to "shut the hell up" or "shut the fuck up" in the car to stop antagonizing § 87(2)(b) but did not recall him making this

statement to § 87(2)(b) PO Rodriguez made no statements about how much money he made and did not remember any officers making any statements about how much they made. PO Rodriguez did not remember § 87(2)(b) saying how much PO Rodriguez made or how much the officers made. PO Rodriguez never made the comments § 87(2)(b) alleged he had made and did not recall any officer saying anything about § 87(2)(b) salary. PO Rodriguez said that en-route to the stationhouse he hit a car while going five or 10 MPH because the other driver stopped short. § 87(2)(b) never moved during the car accident. PO Rodriguez asked § 87(2)(b) if he was ok and if he needed an ambulance. § 87(2)(b) replied “I don’t need a fucking ambulance. Just take me back to the precinct and let me call my wife.” PO Rodriguez did not hear PO Savella or any officer say, “Shut the fuck up and stop bitching” after the car accident. However, PO Savella did make a statement to § 87(2)(b) along the lines of “stop being a bitch” (08 Board Review).

Lieutenant Machado confirmed that PO Rodriguez did not use profanity toward § 87(2)(b) in the initial encounter. Lieutenant Machado did not hear any other officer use profanity during the initial encounter. Lieutenant Machado did not remember PO Savella making the discourteous statements alleged by § 87(2)(b) and said that he was paying attention to § 87(2)(b) during the incident. Lieutenant Machado confirmed that § 87(2)(b) yelled and cursed on the drive to the stationhouse saying that his wife knew the Borough President and would get the officers fired. No officers told § 87(2)(b) to “Shut the fuck up” on the ride. Lieutenant Machado did tell § 87(2)(b) to be quiet. Lieutenant Machado denied that PO Rodriguez made the alleged statements regarding salary and did not remember any officer discussing salary. Lieutenant Machado said that § 87(2)(b) did not make any comments after the car accident, did not fly forward, and did not sustain or complain of any injuries. § 87(2)(b) was not crying in the car, but was laughing the whole time about how he was going to get the officers fired. Lieutenant Machado did not hear PO Savella or any other officer say, “Shut the fuck up and stop bitching,” but said that he was on his phone texting his sick daughter and therefore not paying attention (05 Board Review).

PO Savella did not remember whether he or any officer said, “What the hell is your problem? Do you know who the fuck we are?” to § 87(2)(b) PO Savella said that he may have said, “What the fuck is your problem? Let me see your ID” to § 87(2)(b) PO Savella said that this sounded like something he may have said if he was exasperated enough. PO Savella could have used the word “fuck” towards § 87(2)(b) after § 87(2)(b) used the word “fuck” approximately 40 times. PO Savella explained that he used profanity during the incident, because § 87(2)(b) used profanity himself and was combative. PO Savella did not remember whether he used the word “fucking” when he told § 87(2)(b) that he would get hurt. PO Savella may have said to § 87(2)(b) “Shut the fuck up.” PO Savella confirmed that § 87(2)(b) yelled and cursed inside the RMP. § 87(2)(b) told the officers that they arrested him for no reason, that his wife § 87(2)(b), that the officers were in trouble, and that they were not allowed to arrest federal employees. PO Savella told § 87(2)(b) to quiet down and calm down. PO Lluca, Lieutenant Machado, and PO Rodriguez responded similarly to § 87(2)(b) with PO Rodriguez speaking the most. PO Savella did not think that he told § 87(2)(b) to “shut the fuck up” in the car, but was not sure whether other officers made this statement. PO Savella thought it was possible the officers made this statement to § 87(2)(b) because every officer was speaking to him. When asked if any officer told § 87(2)(b) he was a “fake federal employee,” PO Savella said that § 87(2)(b) kept saying that he was a federal employee and at some point an unknown officer told § 87(2)(b) that he did not have legal immunity because he was a federal employee.

PO Savella said that § 87(2)(b) told the officers that he made more money than them and that they were “fucking losers.” § 87(2)(b) also said he would get Borough President Eric Adams to fire them. PO Savella believed the officers responded to § 87(2)(b) but PO Savella did not remember what he and the other officers had said. None of the officers mentioned salary before § 87(2)(b) mentioned salary, but PO Savella did not remember whether any officers ever mentioned their own salary. PO Savella did not think PO Rodriguez made the above alleged statements about salary. § 87(2)(b) brought up his salary first and PO Rodriguez may have responded, but PO Savella did not remember what PO Rodriguez said specifically. PO Savella said that PO Rodriguez became distracted when arguing with § 87(2)(b) and the RMP rolled into another vehicle at approximately 3 MPH. PO Rodriguez faced forward during the accident, but was making unknown statements to § 87(2)(b). PO Savella confirmed that § 87(2)(b) was not injured by the accident and made no complaints of injuries immediately following the accident. Neither PO Savella nor any officer ever told § 87(2)(b) “Shut the fuck up and stop bitching” and never referred to § 87(2)(b) as a “bitch” (16 Board Review).

PO Lluka confirmed that PO Rodriguez did not use profanity during the initial exchange and did not recall any officer using any profanity during that time. PO Savella did not say, “What the hell is your problem. You know who the fuck we are”, did not recall any officer saying this. PO Savella might have said, “Shut the fuck up. Put your hands behind your back” to § 87(2)(b). No other officer made this statement. PO Lluka confirmed that on the drive to the 71st Precinct stationhouse, § 87(2)(b) yelled in the car saying that his wife was a police officer and worked for Eric Adams. PO Lluka said that other officers spoke to § 87(2)(b) but he did not remember what they had said. § 87(2)(b) apologized to PO Lluka at some point for cutting his finger. PO Lluka explained that he sustained a small cut to his finger during the handcuffing and was focused on keeping this cut clean during the drive. However, PO Lluka did not prepare a Line of Duty injury report, because he was able to put a Band-Aid on it at the stationhouse. PO Lluka did not recall any officer telling § 87(2)(b) “Shut the fuck up,” during the car ride, but one of the officers may have made this statement to § 87(2)(b). PO Lluka never heard PO Rodriguez make the above alleged statements about salary and never heard § 87(2)(b) or any officer comment on salary. Four blocks from the 71st Precinct stationhouse, PO Rodriguez rear-ended a car at approximately 10 MPH. No one was injured in this car accident, although § 87(2)(b) complained that his shoulder hurt. § 87(2)(b) never fell out of his seat during the car accident. The officers told § 87(2)(b) that they would get him an ambulance at the stationhouse for his shoulder. § 87(2)(b) was not crying after this car accident. PO Lluka did not hear PO Savella tell § 87(2)(b) “Shut the fuck up and stop bitching,” but did not remember whether any officer said this. PO Savella never referred to § 87(2)(b) as a “bitch” (17 Board Review).

P.G. 203-09 says that officers must be courteous and respectful (18 Board Review).

With regard to **Allegation A**, § 87(2)(b) alleged during his CCRB interview that PO Rodriguez’s response to him was, “We have the fucking right of way. We’re fucking cops. Who the fuck are you?” During his IAB interview, § 87(2)(b) said that PO Rodriguez responded, “Excuse me.” § 87(2)(b) then said that he exchanged curses back and forth with all four officers, but did not provide any specific statements. None of the independent witnesses remembered hearing any specific statements made by PO Rodriguez, with § 87(2)(b) saying that Lieutenant Machado made the first comment. For his part, PO Rodriguez denied using profanity in his response toward § 87(2)(b) and said that he merely instructed § 87(2)(b) to be careful. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) alleged that every officer except PO Lluca cursed at him and specifically told him to “shut the fuck up” during the drive to the stationhouse. § 87(2)(g)

by saying that PO Savella and PO Lluca repeatedly told § 87(2)(b) to “shut the fuck up.” PO Rodriguez also testified that Lieutenant Machado said “shut the fuck up” or “shut the hell up,” but directed this statement toward PO Savella and PO Lluca because of their antagonistic behavior toward § 87(2)(b). PO Rodriguez also testified that PO Savella told § 87(2)(b) to “stop being a bitch” following the car accident. PO Rodriguez denied using any profanity toward § 87(2)(b) himself, but PO Savella testified that PO Rodriguez was speaking the most to § 87(2)(b) and corroborated that PO Rodriguez got into the car accident because he was distracted by his argument with § 87(2)(b). PO Savella also acknowledged that he may have told § 87(2)(b) to “shut the fuck up,” although he denied using the word “bitch.” PO Savella cited his exasperation toward § 87(2)(b) to explain why he used profanity. § 87(2)(g)

For his part, PO Lluca did not recall any officers speaking discourteously toward § 87(2)(b) while Lieutenant Machado denied that he or any officer spoke discourteously toward § 87(2)(b) in the car. While § 87(2)(b)'s video does not capture all the statements that are alleged, the video does capture PO Savella using the word “fuck” twice. § 87(2)(g) Additionally, a search of the “See Through NY” website confirmed that PO Rodriguez earned the amount he claimed in his alleged statements and the officers generally acknowledged discussing salary in the car. § 87(2)(b) did not know PO Rodriguez’s name at the time of his CCRB interview. § 87(2)(g)

Allegation B –Abuse of Authority: In front of 999 President Street, Police Officer Miguel Rodriguez stopped § 87(2)(b)

Allegation C –Abuse of Authority: In front of 999 President Street, Police Officer Lazo Lluca stopped § 87(2)(b)

Allegation D –Abuse of Authority: In front of 999 President Street, Police Officer David Savella stopped § 87(2)(b)

Allegation E –Abuse of Authority: In front of 999 President Street, Lieutenant Luis Machado stopped § 87(2)(b)

Allegation M –Abuse of Authority: At the 71st Precinct stationhouse, Lieutenant Luis Machado issued a summons to § 87(2)(b)

§ 87(2)(b) stated that he observed the unmarked RMP turn onto President Street and that the driver, PO Rodriguez, appeared to be focused on individuals on the sidewalk to his right. § 87(2)(b)

§ 87(2)(b) stuck one foot out of the truck, but quickly moved back into his truck when the RMP passed within two feet of him. § 87(2)(b) then got back out of his truck and shouted, “Watch where the fuck you’re going! What the hell?” without knowing that the occupants of the vehicle were officers. PO Rodriguez and the other officers then cursed at § 87(2)(b). § 87(2)(b) ignored the officers and walked across the street. § 87(2)(b) noticed that the RMP backed up and that the officers got out of the car and approached him. PO Savella told § 87(2)(b) to provide his ID. § 87(2)(b) replied that his ID was on the side of his truck, meaning the USPS logo, and asked why he had to get his ID. § 87(2)(b) wallet with his driver’s license was inside of his pocket, but he did not provide his ID because he was clearly a Postal Carrier in uniform while the officers did not formally identify themselves or display their shields and he was unsure they were officers. PO Savella told § 87(2)(b) to get his ID approximately six additional times. PO Lluca then reached under his hoodie and took out his handcuffs. § 87(2)(b) said that in total approximately 30 civilians were outside observing the incident from various distances with some looking out of apartment windows. § 87(2)(b) heard a number of individuals shouting that the situation was not right and asking why § 87(2)(b) was being arrested. § 87(2)(b) said that later at the 71st Precinct stationhouse, PO Savella came to the cells and brought § 87(2)(b) upstairs where PO Rodriguez, PO Lluca, and Lieutenant Machado were waiting. PO Savella told § 87(2)(b) that the incident was a misunderstanding § 87(2)(b)

§ 87(2)(b) PO Savella said § 87(2)(b) had been very aggressive and was in the wrong, because he should have never been double-parked and that he was going to be issued a summons for disorderly conduct for the statements he made (04 Board Review). § 87(2)(g)

§ 87(2)(b) said that after they saw the officers get out of the vehicle, he, § 87(2)(b) and the other individuals inside the barbershop went outside to see what was going on and § 87(2)(b) began filming. § 87(2)(g)

§ 87(2)(b) said that after the initial back and forth between § 87(2)(b) and an officer in the car, the RMP reversed while § 87(2)(b) walked toward a doorway and rang the bell. The officers got out of the unmarked car and approached § 87(2)(b) who turned around and said to the officers, “Y’all can’t do me nothing. I’m working. Y’all almost hit me. What the fuck are y’all doing?” One of the officers said something to § 87(2)(b) who replied, “My wife is police. Y’all ain’t doing me shit. You take me down, I’ll be out in no time.” One of the officers replied, “Ok, we’ll see about that.” § 87(2)(g) crowd formed and the officers handcuffed § 87(2)(b) (10 Board Review).

The security footage from 1000 President Street, starts with § 87(2)(b) mail truck double-parked on the left side of President Street. At 00:15, an unmarked black car is observed making a right turn onto President Street from Franklin Avenue. Movement can be observed inside the cab of the mail truck as the unmarked car passes. At 00:28, the car stops just in front of the mail truck and the driver, PO Rodriguez, appears to be gesturing with his hand. The left side passenger window of the car is up. At 00:36, § 87(2)(b) can be seen in a blue postal uniform with blue baseball cap carrying a tan colored parcel toward the red door of 999 President Street. § 87(2)(b) appears to speak to the driver of the car as he walks. A male with a black t-shirt and white cap then comes out of the barber shop next door to 999 President Street and appears to watch the conversation. At 00:38 the car drives forward approximately 10 feet, stops, and reverses quickly until it is on the right side of the mail truck and blocked by the mail truck. There

is a male watching the incident on the side of the street with the mail truck and bystanders walking back and forth past § 87(2)(b). At 00:57, while standing at the door of 999 President Street, § 87(2)(b) is holding his package, looking in the direction of his truck and gesturing with his head as though he was shouting something. At 01:00 § 87(2)(b) drops the parcel he is carrying and appears to raise both of his hands before picking up the package. At 01:12 the door to the barbershop opens and other individuals come out. PO Lluca, a light skinned male with a blue hoodie and jeans is observed walking toward § 87(2)(b) from the street. Shortly after, two light skinned males, one with a blue t-shirt and jeans (PO Savella) and the other with black pants, a black vest over a gray shirt and a black backwards baseball cap (Lieutenant Machado) are observed walking toward § 87(2)(b). At 01:21 multiple individuals come out of the barbershop to watch and there is a male watching the incident on the opposite side of the street. The unmarked car drives forward and parks in front of the mail truck. PO Rodriguez, a light skinned male with a bald head, dark pants, a dark long sleeved shirt, and a tan colored vest, exits the car then walks where PO Lluca, PO Savella, and Lieutenant Machado are interacting with § 87(2)(b) (14 and 15 Board Review).

§ 87(2)(b)'s video of the incident begins with PO Savella approaching § 87(2)(b) who turns away while standing in the doorway of 999 President Street. PO Lluca stands next to PO Savella facing § 87(2)(b) who has his back to the closed door. One of the officers makes a comment about § 87(2)(b) ID while a female yells, "Why are they doing that to him?" § 87(2)(b) then says loudly, "My ID. My ID is right there in the side of the truck" and points toward the street. A male voice is heard saying, "Come get your ID please." PO Savella then says, "Let's go get it. Let's go get your ID." § 87(2)(b) says, "I'm delivering my parcel." At 00:16 Lieutenant Machado is observed holding a cup in his right hand. PO Savella then says, "Let me see your ID. Do you understand?" PO Lluca reaches his right hand under his hoodie and appears to grab something on the back of his waist. At 00:25 PO Rodriguez walks toward § 87(2)(b). The camera pans right and a USPS truck is seen double parked on the left side of the one way street. A male voice is then heard saying, "Where's your ID?" loudly. § 87(2)(b) says, "Why are you touching me?" A voice is then heard saying, "They're locking him up." Another male voice loudly says, "Nah, nah, nah, nah. On the Job?" § 87(2)(b) a black male with dreads wearing a stocking cap and a black and gray striped shirt, moves closer next to PO Rodriguez, who holds his arm out to prevent § 87(2)(b) from walking closer and appears to say something to him. § 87(2)(b) drops the parcel he is holding at 00:33 as he is being handcuffed (Board Review 12 and 13).

PO Rodriguez said that he was driving past the postal truck at a distance of approximately two feet at approximately five miles per hour. While passing the truck, § 87(2)(b) stepped backward without looking from the door of the truck and entered the street within one foot of the RMP while holding a parcel in his hands. After entering the street, § 87(2)(b) yelled, "Watch how you drive asshole!" PO Rodriguez told § 87(2)(b) that he had to be careful how he exited his truck, because he could not see § 87(2)(b) due to the way his doors opened. § 87(2)(b) responded, "I don't give a fuck! Just keep driving!" PO Rodriguez identified himself as an officer and said that he and the other officers never had a problem with a mailman before. § 87(2)(b) yelled, "I don't give a fuck! I don't give a fuck who you are! I'll get you guys fired! I'll get all you niggas fired!" PO Rodriguez asked why § 87(2)(b) would get the officers fired when he made the mistake. PO Rodriguez said that § 87(2)(b) continued yelling and saying that he "did not give a fuck" while walking behind the RMP. PO Rodriguez was prepared to leave, but PO Savella and PO Lluca, in the back seat, began shouting and cursing back and forth with § 87(2)(b). § 87(2)(b) responded to PO Savella and PO Lluca, "Y'all niggas can't touch me. Get the

fuck out of here Y'all can't touch me." § 87(2)(b) then dropped his box and held both hands up at chest level with his fists clenched in a gesture signifying being handcuffed and said, "Come lock me up. Come do something. Y'all niggas can't do shit to me. Get the fuck out of here! I'll get y'all motherfuckers fired!" Lieutenant Machado was on his phone, but might have said to § 87(2)(b) "You're acting disorderly. If you continue acting this way, I'm going to ask for your ID." Some of the people inside of the barbershop came outside because of the yelling and people walking stopped and looked to see what was going on. These people began yelling statements along the lines of, "Y'all can't do that," "Lawsuit lawsuit!" "Put a bullet in the air!" "Throw bottles, throw bottles." PO Rodriguez did not remember exactly when these statements were made.

PO Rodriguez said that PO Lluca got emotional and said, "Ah fuck this guy" loud enough for § 87(2)(b) to hear and got out of the car with PO Savella following close behind. PO Rodriguez believed PO Lluca's original intention was just to get § 87(2)(b) ID to look at and issue a warning depending on what Lieutenant Machado decided. PO Rodriguez said that PO Lluca and PO Savella took control of the situation despite the presence of Lieutenant Machado and PO Rodriguez. PO Rodriguez was not sure if the lieutenant was aware of what was going on, but exited the vehicle when PO Savella and PO Lluca did as protocol dictates that when one officer exits the vehicle they all follow whether they agree with the action or not. PO Rodriguez had no intention of stopping § 87(2)(b) and only wanted to make a verbal point that § 87(2)(b) was in the wrong. However, § 87(2)(b) verbal dispute between PO Lluca and PO Savella escalated into a disorderly conduct incident when people congregated on the sidewalk due to § 87(2)(b) shouting. By the time PO Rodriguez exited the RMP, PO Savella and PO Lluca were in a heated verbal dispute with § 87(2)(b) with all three of them cursing at each other. PO Lluca and PO Savella physically stopped § 87(2)(b) and asked him for his ID at least five times and told him it was for disorderly conduct. § 87(2)(b) told PO Savella and PO Lluca, "I'm not giving you shit." PO Lluca or PO Savella then put their hands on § 87(2)(b) to arrest him and § 87(2)(b) pointed and said that his ID was in his truck. PO Lluca and PO Savella stepped back and told § 87(2)(b) to get it. § 87(2)(b) said again, "I ain't giving you shit" and turned around to do whatever he was doing before. PO Lluca and PO Savella told § 87(2)(b) twice that he would get arrested if he did not provide ID and subsequently grabbed § 87(2)(b) to handcuff him. PO Rodriguez said that later at the stationhouse, § 87(2)(b) apologized for disrespecting the officers and said that he got upset because vehicles frequently come close to hitting him while he worked (08 Board Review).

Lieutenant Machado confirmed that § 87(2)(b) cursed at the officer's car and told PO Rodriguez to watch where he drove. Lieutenant Machado said that he heard PO Rodriguez tell § 87(2)(b) to not jump out of his vehicle backwards, because he could have been hit. One of the other officers in the car asked § 87(2)(b) "Do you know who we are?" Lieutenant Machado confirmed that § 87(2)(b) said he knew the RMP contained officers, but cursed and said they could not do anything to him. Lieutenant Machado said that § 87(2)(b) continued to curse and § 87(2)(b). At that time, every officer mutually decided to get out of their vehicle without prior discussion. The original intent on getting out of the vehicle was just to talk to § 87(2)(b) and find out what was wrong and not to issue § 87(2)(b) a c-summons. Lieutenant Machado did not decide that a c-summons would be written until § 87(2)(b) refused to provide his ID. Lieutenant Machado said that § 87(2)(b) walked to the sidewalk and kept cursing loudly and saying § 87(2)(b). Because of § 87(2)(b) yelling, between five and 10

individuals came out of the nearby barbershop and out of the basement under the nearby bodega when the officers got on the sidewalk. This crowd included a couple of gang members, who were cursing at the officers the whole time.

Lieutenant Machado confirmed that officers, he did not remember who, asked for § 87(2)(b) ID at least two or three times. § 87(2)(b) ID was needed because Lieutenant Machado had to conduct an investigation into § 87(2)(b) use of obscene language, which is disorderly conduct. When asked whether § 87(2)(b) was doing anything else that could be considered disorderly conduct, Lieutenant Machado said that his obscene language was drawing a crowd. Lieutenant Machado explained that because § 87(2)(b) refused to provide his ID numerous times, the officers would not extend any further courtesy and he would get a c-summons. In order to issue this summons, officers needed to verify § 87(2)(b) identity and since he refused to provide ID, the only way to confirm his identity was to take him back to the stationhouse and confirm his identity there. Lieutenant Machado did not remember which officers initially grabbed § 87(2)(b). After being grabbed to be handcuffed, § 87(2)(b) said that his ID was in his truck, but at that point it was too late. Lieutenant Machado said that later at the stationhouse, he spoke to § 87(2)(b) in his office and § 87(2)(b) said that he was upset because he got into an argument with his fiancée. Lieutenant Machado said that he could have arrested § 87(2)(b) for resisting arrest due to his refusal to be handcuffed, but since he was a federal worker, Lieutenant Machado gave him a break and only issued him a c-summons so as to not hurt his career (05 Board Review).

PO Savella confirmed that § 87(2)(b) almost stepped back into the RMP and that § 87(2)(b) cursed at the RMP and yelled that PO Rodriguez had to watch where he was driving. PO Rodriguez then stopped the RMP and told § 87(2)(b) to be careful how he exited his truck. PO Savella did not remember whether PO Rodriguez had said anything else to § 87(2)(b). There were no individuals outside watching when PO Rodriguez first spoke to § 87(2)(b). § 87(2)(b) continued to yell at the officers and moved across the street. The RMP then backed up and PO Savella saw § 87(2)(b). PO Savella did not know who decided to back up the RMP, but believed that PO Rodriguez decided on his own. PO Savella did not instruct PO Rodriguez to back up the RMP and did not hear any discussion about backing up the RMP before it backed up. Lieutenant Machado told § 87(2)(b) to calm down and stop using abusive language. PO Savella explained that § 87(2)(b) shouted profanity and racial remarks toward the officers at a high volume on a residential street with children and other individuals around. PO Savella said that § 87(2)(b) called the officers, “Niggers” and said that the officers could not do anything to him because he was a federal employee on his route. PO Savella observed a couple of individuals on the sidewalk who stopped walking and appeared to watch the discourse between § 87(2)(b) and the officers from the side of the street that § 87(2)(b) truck was parked. A couple other individuals also came out of the nearby deli and barbershop and individuals stopped walking on both sides of President Street to watch the conversation. PO Savella did not remember exactly how many individuals were watching or when specifically he noticed them. PO Savella did not think that either he or PO Lluca joined in this initial conversation, but he did not remember. Lieutenant Machado then said to § 87(2)(b) “Don’t make me ask for your ID. You gotta watch your language and lower your voice.” § 87(2)(b) replied, “You can’t do anything to me. Please arrest me.” At this point, § 87(2)(b) was standing in the doorway of 999 President Street holding a parcel in his hand. § 87(2)(b) then dropped the package he was holding onto the sidewalk and held his fists up in a handcuffing gesture. § 87(2)(b) said to the officers, “Please arrest me. Please do me a favor and fucking arrest me.”

PO Savella said that Lieutenant Machado then made a statement to the other officers along the lines of, “We gotta get out. We’re dis-coning this guy. Let’s give him a C.” PO Savella stepped out of the RMP first and approached § 87(2)(b) with PO Lluca. Both PO Savella and PO Lluca asked § 87(2)(b) for his ID and possibly told § 87(2)(b) that he was being stopped for disorderly conduct. The original intention in approaching § 87(2)(b) was to issue him a c-summons for disorderly conduct, which is why his ID was required. PO Savella said that § 87(2)(b) responded, “No, fuck you. I don’t have to give it to you. I’m on my route.” § 87(2)(b) said that he did not have his ID and then said that his ID was in his truck. PO Savella told § 87(2)(b) that they could go to his truck and § 87(2)(b) hesitated and then said, “No fuck you. I’m not doing that again.” § 87(2)(b) also mentioned that § 87(2)(b) the officers would have to talk to his wife. In total, PO Savella and PO Lluca asked § 87(2)(b) five or six times for ID. Lieutenant Machado may have asked for § 87(2)(b) ID as well. Since § 87(2)(b) refused to provide his ID he was handcuffed and taken to the stationhouse. PO Savella said that at the stationhouse he asked Lieutenant Machado what the officers were doing with § 87(2)(b). Lieutenant Machado instructed PO Savella to charge § 87(2)(b) with disorderly conduct, obstruction of governmental administration (OGA), and resisting arrest. PO Savella said that § 87(2)(b) committed OGA the first time he refused to provide his ID and also when he attempted to walk away during the later field search (discussed below under **Allegation I**). After an unknown period of time, § 87(2)(b) who was in the holding cell, asked PO Savella again to call his wife, § 87(2)(b). Lieutenant Machado left a message for her § 87(2)(b) and PO Savella later received a phone call from her. Lieutenant Machado then told PO Savella to wait to do an arrest report because the officers might give § 87(2)(b) a c-summons. Lieutenant Machado also told PO Savella that their commanding officer had been informed of the arrest § 87(2)(b).

PO Lluca said that he first noticed § 87(2)(b) when he became loud and got into a verbal dispute with PO Rodriguez. § 87(2)(b) cursed and told PO Rodriguez to watch where he was driving and also threw his parcel to the floor and said that the officers could not do anything to him. PO Lluca confirmed that PO Rodriguez told § 87(2)(b) to be careful how he exited his truck. There were also a couple of exchanges between other officers and § 87(2)(b) but PO Lluca did not remember the specifics. PO Lluca thought Lieutenant Machado also told § 87(2)(b) to be careful how he exited his truck. PO Lluca did not remember himself or PO Savella saying anything. The RMP then backed up, but PO Lluca was not sure who decided to back up the RMP. PO Lluca, PO Savella, PO Rodriguez, and Lieutenant Machado then got out of their car collectively as a group. PO Lluca did not remember any officer instructing him to get out of the car or any discussion prior to getting out of the car. PO Lluca said that the original intention of getting out of the vehicle was to investigate why § 87(2)(b) was being so loud, agitated, and abusive with his language. § 87(2)(b) was not going to be issued a summons immediately and the initial request for ID was a request for information to determine who he was. PO Lluca thought that § 87(2)(b) might get a disorderly conduct summons, because he was being loud and causing a crowd to form, but that was not the original intention. PO Lluca asked § 87(2)(b) for his ID four or five times, but § 87(2)(b) refused each time. Approximately four to five people were watching this conversation, but PO Lluca did not know whether they came on the scene before or after the officers got out of the car. These individuals were standing to the side, but PO Lluca was

not sure exactly where they stood. The crowd was yelling statements including, “We’re going to shoot the block up.” Additional people also came outside because of § 87(2)(b) yelling. PO Lluca said that § 87(2)(b) said that his ID was in his truck, but he was never escorted to his truck because he refused to go and get his ID. There was never any discussion about giving § 87(2)(b) a c-summons, but he was placed under arrest because PO Lluca heard another officer, he was not sure who, say, “He’s under.” PO Lluca did not have any further conversation with § 87(2)(b) at the 71st Precinct stationhouse (17 Board Review).

PL. 240.20 says that a person is guilty of disorderly conduct when with intent to cause public inconvenience, annoyance, or alarm, or recklessly creating a risk thereof, he makes unreasonable noise, or in a public place he uses abusive or obscene language, or makes an obscene gesture (19 Board Review).

Isolated statements using course language to criticize the actions of a police officer, unaccompanied by provocative acts or other aggravating circumstances, will rarely afford a sufficient basis to infer the presence of public harm, which is necessary to support a charge of disorderly conduct (People v. Fassinger 42 Misc. 3d 407 N.Y.S. 2d 602; (Auburn City Ct. 2013)) (20 Board Review).

The officers said that § 87(2)(b) cursed repeatedly at a high volume after the initial exchange between § 87(2)(b) and PO Rodriguez. The officers also said that this exchange drew the attention of various individuals on the sidewalk, but testified that the majority of the crowd did not gather until after they approached § 87(2)(b) § 87(2)(g)

§ 87(2)(b) PO Rodriguez testified that the original intention was simply to request § 87(2)(b) ID and deescalate the situation. Lieutenant Machado and PO Lluca both said that the original intention was simply to investigate § 87(2)(b) yelling and they only decided to arrest § 87(2)(b) after he refused to provide his ID multiple times. PO Savella, on the other hand, said that Lieutenant Machado instructed the officers to issue § 87(2)(b) a c-summons for disorderly conduct prior to exiting the RMP. PO Savella further testified that at the stationhouse, Lieutenant Machado instructed him to arrest and charge § 87(2)(b) with disorderly conduct, OGA, and resisting arrest and only decided to issue § 87(2)(b) a c-summons after speaking to their commanding officer. § 87(2)(g)

§ 87(2)(b) Security footage of the incident does appear to show § 87(2)(b) yelling toward the RMP and corroborates that he dropped his package and made a non-obscene gesture to the officers prior to them exiting their vehicle. However, this same footage also confirms that only a handful of individuals were watching the exchange prior to the officers backing up their RMP to yell at § 87(2)(b) and then exiting approximately 30 seconds later in order to stop him, which caused the majority of the crowd to form. § 87(2)(b)s video, which begins shortly after the officers exited their vehicle, shows § 87(2)(b) to be calm and not yelling, cursing, or otherwise acting disorderly. § 87(2)(g)

§ 87(2)(g)

Allegation G –Discourtesy: In front of 999 President Street, Lieutenant Luis Machado spoke discourteously to § 87(2)(b)

§ 87(2)(b) alleged that when he asked the officers to call his fiancée, Lieutenant Machado allegedly responded, “We don’t care about that. Fuck your wife.” § 87(2)(b) said that Lieutenant Machado’s comment can be heard on the video (04 Board Review).

§ 87(2)(b) confirmed in his phone statement that Lieutenant Machado’s comment was that he did not want to speak to § 87(2)(b) wife. § 87(2)(b) did not mention § 87(2)(b) asking the officers to speak to his fiancée or the officers responding during his CCRB interview (06 and 07 Board Review).

§ 87(2)(b) and § 87(2)(b) did not mention § 87(2)(b) asking the officers to speak to his fiancée or the officers responding in their statements (10 and 11 Board Review).

Upon reviewing § 87(2)(b)’s video of the incident, at 00:16 § 87(2)(b) makes a comment about his wife and Lieutenant Machado says loudly, “Nah nah nah I don’t wanna talk to your wife” (Board Review 12 and 13).

Lieutenant Machado, PO Rodriguez, PO Savella, and PO Lluka all denied that Lieutenant Machado said “fuck your wife” to § 87(2)(b). Lieutenant Machado, PO Rodriguez, and PO Savella all said that Lieutenant Machado merely said he did not want to talk to § 87(2)(b) wife (05, 08, 16, and 17 Board Review).

§ 87(2)(g)

Allegation H –Abuse of Authority: In front of 999 President Street, Police Officer David Savella threatened § 87(2)(b) with the use of force.

§ 87(2)(b) said that PO Savella and PO Lluka grabbed his arms, which were at his sides, from opposite sides to handcuff him and pulled in two directions at once. § 87(2)(b) also said that all the officers were shorter than him, so he was not sure where they wanted him to move. PO Savella told § 87(2)(b) “Stop resisting.” § 87(2)(b) replied that he was not resisting. PO Savella also told § 87(2)(b) “You’re going to get hurt. You want to get fucking hurt?” during the handcuffing process. § 87(2)(b) never resisted the officers and never tried to hold his hands in front of him or at his side. At this time, Lieutenant Machado approached § 87(2)(b) and told him to calm down multiple times (04 Board Review). In a later phone statement, § 87(2)(b) said that he told the officers during the handcuffing that his shoulder was hurting, because he had an injury and surgery prior to the incident. § 87(2)(b) could not remember whether he made this comment to the officers before or after PO Savella asked, “You want to get fucking hurt?” (09 Board Review).

§ 87(2)(b) said the officers told § 87(2)(b) to stop resisting and put his hands behind his back. § 87(2)(b) replied, “Resisting for what?” The officers held § 87(2)(b) using their hands and

PO Savella told § 87(2)(b) that he was going to get hurt if he did not give PO Savella his hands and stop resisting (07 Board Review). § 87(2)(g)

§ 87(2)(b) said the officers pulled and tugged on § 87(2)(b) even though he never resisted or tried to pull away from officers. § 87(2)(b) became verbally upset over this treatment and the officers pulled and tugged on him more aggressively (11 Board Review).

§ 87(2)(b) said only that the officers handcuffed § 87(2)(b) (10 Board Review).

§ 87(2)(b)'s video shows that at 00:41 PO Savella and PO Lluka are holding § 87(2)(b) as a male voice says, "Stop resisting!" § 87(2)(b) is then pulled from the doorway and PO Lluka holds onto his arm. PO Savella is then in front of § 87(2)(b) and says, "Stop resisting! Put your hands behind your back!" PO Savella attempts to push § 87(2)(b)'s hands behind him while PO Lluka holds § 87(2)(b)'s hoodie and upper arm. During the interaction, § 87(2)(b) remains standing with his hands at his side. At times, § 87(2)(b) appears to prevent the officers from pulling his hands behind his back by keeping them rigidly by his side. § 87(2)(b) and the officers move around a few feet in different directions, but it is not clear whether § 87(2)(b) is moving or PO Lluka is pulling him. PO Rodriguez holds his hand out to § 87(2)(b) and appears to say something to § 87(2)(b). Lieutenant Machado also moves in and assists PO Savella and PO Lluka in holding § 87(2)(b). § 87(2)(b) yells, "I'm not resisting!" PO Savella replies, "Yes you are. Stop resisting!" PO Rodriguez moves in to assist the other officers and PO Savella says, "Put them behind your back....You're gonna get hurt unless you put your fucking....yes you are." § 87(2)(b) says, "I'm not doing anything to you" (12 and 13 Board Review).

PO Savella's description of § 87(2)(b)'s resistance to handcuffing was generally consistent with § 87(2)(b)'s video. PO Savella said § 87(2)(b) told the officers, "I just had shoulder surgery. You're going to fuck up my shoulder." PO Savella replied, "Then you should stop fighting or you're going to get hurt." § 87(2)(b) asked, "Oh are you going to hurt me?" PO Savella said that his statement was in response to § 87(2)(b) mentioning his shoulder surgery and not a threat of force. The officers used two sets of handcuffs in consideration of § 87(2)(b)'s shoulder pain (16 Board Review).

Lieutenant Machado and PO Rodriguez's account generally corroborated PO Savella's account (05 and 08 Board Review).

PO Lluka's description of § 87(2)(b)'s resistance to handcuffing was generally consistent with § 87(2)(b)'s video. PO Lluka did not recall if PO Savella said, "You're going to get hurt. Do you want to get fucking hurt?" PO Lluka was not sure if PO Savella made any threats of force toward § 87(2)(b) as it was hard to hear due to the yelling of the crowd. PO Lluka did not remember § 87(2)(b) making any statements during the handcuffing and he did not complain of any pain or being injured (17 Board Review).

§ 87(2)(g)

§ 87(2)(g)

Allegation I –Force: In front of 999 President Street, Police Officer David Savella used physical force against § 87(2)(b)

§ 87(2)(b) said that after being escorted to the officers' vehicle, PO Savella kept aggressively pulling § 87(2)(b) toward him while searching his pockets. PO Savella pulled on § 87(2)(b) right pocket so aggressively that he tore a piece of cloth off of the right pocket, ripping the whole pocket. § 87(2)(b) believed that PO Savella wanted him to do something, but he did not know what. § 87(2)(b) did not remember what PO Savella said to him while performing this action, but said that it was not polite. § 87(2)(b) never pulled away from PO Savella (04 Board Review). § 87(2)(g)

§ 87(2)(b) said that after a short time, the officers handcuffed § 87(2)(b) and led him to their RMP. Outside the RMP, PO Savella searched § 87(2)(b) leg pocket. While this was going on, § 87(2)(b) made a statement to PO Savella along the lines of, "Yo you don't gotta do all that." PO Savella responded by grabbing § 87(2)(b) pants and making a statement along the lines of, "Don't fucking tell me what I gotta do." § 87(2)(b) was not sure of the exact statement, because everyone was yelling for PO Savella to leave the mailman alone (07 Board Review).

§ 87(2)(b) and § 87(2)(b) did not mention this interaction in their statements (10 and 11 Board Review).

Upon reviewing § 87(2)(b)'s video of the incident, the camera pans right and § 87(2)(b) can be seen standing beside the RMP. Lieutenant Machado gets into the driver's seat of the car and PO Rodriguez gets into the front passenger seat. At 01:49 PO Savella appears to be moving his hands at § 87(2)(b) waist. § 87(2)(b) turns and PO Savella appears to grab § 87(2)(b) right leg. § 87(2)(b) takes a step back when PO Savella does this as though adjusting his balance. § 87(2)(b) demeanor is calm and he does not appear to be yelling or making any statements. PO Savella reacts by standing up and grabbing § 87(2)(b) leg and the front of his hoodie and quickly pulling § 87(2)(b) closer to him. PO Savella then says, "I'm fucking serious" (13 and 24 Board Review).

PO Savella said that he searched § 87(2)(b) armpits, waist, groin, and pockets and recovered § 87(2)(b) wallet and keys. § 87(2)(b) resisted being searched by trying to walk away and PO Savella had to pull § 87(2)(b) closer to his body. PO Savella said that § 87(2)(b) moved his feet and backed up, but did not turn away from him. PO Savella told § 87(2)(b) to stop moving and that he did not have a choice over whether to be searched. PO Savella did not say anything else to § 87(2)(b). PO Savella was not sure whether he said, "I'm fucking serious" when he pulled § 87(2)(b) toward him during the search by the RMP. PO Savella said that he was not sure whether § 87(2)(b) would have run or hit him if he let § 87(2)(b) go (16 Board Review).

PO Rodriguez said that once § 87(2)(b) was handcuffed, PO Savella escorted § 87(2)(b) to the officers' vehicle, searched him and put him into the vehicle. § 87(2)(b) was still yelling while being searched, but PO Rodriguez was not sure whether he physically resisted being searched. When § 87(2)(b) was searched, PO Rodriguez was walking toward the driver's door of the RMP and observed PO Savella pat down § 87(2)(b). PO Rodriguez did not observe any struggle between § 87(2)(b) and did not hear PO Savella make any specific statements (08 Board Review).

Lieutenant Machado and PO Lluca both said that they did not observe PO Savella search § 87(2)(b) and did not remember hearing PO Savella making any statements to § 87(2)(b) during the search (05 and 17 Board Review).

P.G. 203-11 says that officers must use only minimum necessary force to make an arrest (21 Board Review).

§ 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Squad: 3

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date